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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-528

NONNEWAUG REGIONAL SCHOOL DISTRICT No. 14,
TOWN OF BETHLEHEM,
Petitioners,

vs.

JOSEPH M. SCOTT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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NONNEWAUG REGIONAL SCHOOL DISTRICT No. 14,
TOWN OF BETHLEHEM,
Petitioners,

vs.

JOSEPH M. SCOTT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners Nonnewaug Regional School District No. 14, and Town of Bethlehem, Connecticut, pray that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit rendered on July 23, 1975 affirming the judgment of the Honorable Jon O. Newman, U. S. District Court for Connecticut.

I.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit, entered on July 23, 1975 is at this time unreported. It is set forth in Appendix A, pp. la *et seq.*

The opinion of the United States District Court for the District of Connecticut, entered on November 22, 1974, is also unreported and is set forth in Appendix B. pp. lb *et seq.*

II.

JURISDICTION

This suit was originally commenced in the United District Court with jurisdiction sought pursuant to 28 U.S.C. sections 1343 (3) and injunctive relief pursuant to 42 U.S.C. sections 1983. The District Court granted plaintiff's motion for summary judgment on November 22, 1974 and entered judgment for plaintiff on January 8, 1975 (Appendix B). Upon appeal, the Court of Appeals for the Second Circuit affirmed the judgment on July 23, 1975 (Appendix A). The jurisdiction of the Supreme Court is invoked, under Rule 19 of the Supreme Court Rules and Title 28, United States Code, Section 1254 (1) on the ground that review by the Supreme Court by a Writ of Certiorari is sought of a judgment of the affirmance on appeal by the United States Court of Appeals for the Second Circuit.

III.

QUESTIONS PRESENTED

Does the one-person-one-vote rule apply to the election of members of the board of education of a regional school district created pursuant to the provisions of the Connecticut General Statutes?

IV.

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitutional Provisions: Fourteenth Amendment.

Statutes: Title 28, United States Code, Sections 1254(1) and Sections 1343(3); Title 42, United States Code, Section 1983; Connecticut General Statutes, Sections 10-46, 10-47,

10-51, 10-56, 10-60, 10-220, 10-221, 10-240, 10-241, 10-241a, 10-242, 10-262.

Rules: Rule 19, Supreme Court Rules.

V.

STATEMENT OF THE CASE

This action was brought in the United States District Court for the District of Connecticut, by the Plaintiff, a citizen, elector and taxpayer of the Town of Woodbury, Connecticut to obtain a permanent injunction requiring the reorganization of Nonnewaug Regional School District No. 14. Jurisdiction was based on 28 U.S.C. Sections 1343(3) and injunctive relief sought pursuant to 42 U.S.C. Sections 1983. Plaintiff complained that the allocation of membership on the regional district's board of education deprived the electors of the Town of Woodbury of equal protection of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

Nonnewaug Regional School District No. 14 was established by the Towns of Woodbury and Bethlehem, Connecticut on May 20, 1968, by a vote of the majority of the electors in each of the towns. It was organized pursuant to and now operates under the provisions of the Connecticut General Statutes pertaining to regional school districts. Under Section 10-47 of the Connecticut General Statutes, such a regional board is not possessed of general governmental powers, but is vested with very specific and restricted powers. General governmental powers with regard to the public school system are vested in the towns themselves.

The Regional Board of Education serving the Nonnewaug Regional School District consists of eight members, four elected from each of the two towns. According to the 1970 United States Census of Population, the respective

populations are 5,869 for Woodbury and 1,923 for Bethlehem; the respective electorates are 3,653 for Woodbury and 1,298 for Bethlehem.

The basis for determining the size and composition of a regional school board is determined by statutory procedure which requires approval by referendum held in each participating town. (Conn. Gen. Stat. Section 10-46.)

VI.

ARGUMENT

The One-Person-One-Vote Principal of Constitutional Law is not Applicable to the Election of Members of the Board of Education of a Regional School District Created Pursuant to Provisions of the Connecticut General Statutes.

A.

The constitutional principle of one-person-one-vote, first enunciated in *Baker* v. *Carr,* 369 U.S. 186 (1962) and extended in *Reynolds* v. *Sims,* 377 U.S. 533 (1964), was held applicable in *Avery* v. *Midland County,* 390 U.S. 474 (1968) to "units of local government having general governmental powers over the entire geographic area served by the body." Id., at 485. The Court in *Avery,* however, recognized that the Midland County Commissioner's Court "is representative of most of the general governing bodies of American cities, counties, towns, and villages", id. at 483 and warned against a too liberal application of the rule:

> This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems. Id at 485.

In *Sailors* v. *Board of Education,* 387 U.S. 105 (1967) and *Hadley* v. *Junior College District* (1970), this Court considered the applicability of the one-person-one-vote rule to the method of selecting members of two school boards. In *Sailors,* the governing board of education was found to be appointive, not elective, and to be performing essentially adminstrative functions. Consequently, the one-person-one-vote principle was held inapplicable. Commenting on *Sailors* and its companion case, *Dusch* v. *Davis,* 387 U.S. 112 (1967), this Court later observed in *Avery,* supra, that:

> The *Sailors* and *Dusch* cases demonstrate that the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local government. We will not bar what Professor Wood has called "the emergence of a new idealogy and structure of public bodies, equipped with new capacities and motivations . . ." R. Wood 1400 Governments, at 175 (1961). Id. at 485.

In *Hadley,* this Court reviewed a statutory scheme for the election of a board of trustees for a regional junior college district which diluted the votes of the electors in the more populous districts comprising the junior college district. After a discussion of the powers exercised by the board of trustees, the Court found application of the one-person-one-vote principal to election of its members constitutionally required:

> Appellants in this case argue that the junior college trustees exercised general governmental powers over the entire district and that under *Avery* the State was thus required to apportion the trustees according to population on an equal basis, as far as practicable. Appellants argue that since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions

to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college their powers are equivalent, for apportionment purposes, to those exercised by the County Commissioners in *Avery*. We feel that these powers, while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees perform important governmental functions within the district, and we think these powers are general enough to have sufficient impact throughout the district to justify the conclusion that the principle which we applied in *Avery* should also be applied here. Id. at 53.

Nevertheless, the *Hadley* Court, quoting from *Sailors, supra,* echoed the cautionary note found in *Avery, supra*:

> As we said before, "(v)iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in muncipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. Id. at 59.

This reference to *Sailors* by the *Hadley* Court is of peculiar interest in light of its enunciation of the general rule that:

> (W)hen a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as it is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials. Id. at 56.

With *Salyer Land Co.* v. *Tulare Water District,* 410 U.S. 719 (1973) and *Associated Enterprises, Inc.* v. *Toltec,* 410

U.S. 743 (1973), this Court limited application of the one-person-one-vote rule as it had developed through earlier decisions. In *Salyer,* the Court held the rule inapplicable to election of members of the governing board of a California Water District which has the statutory power to contract for the construction of district projects; the power to condemn private property for use in such projects; the authority to issue general obligation bonds; the power of eminent domain; the power to employ and to dismiss persons on a regular staff; the authority to provide for the generation and distribution of hydro-electric power; and the power to fix tolls and charge for the use of water, and to collect them from persons receiving services in proportion to the services rendered. *Salyer,* at 723-724 and 728 n.7.

Despite the possession of such governmental powers the majority of this Court held that the one-person-one-vote principle does not apply to such a governmental arrangement:

> The appellee district in this case, although vested with some typical governmental powers, has relatively limited authority. Its primary purpose, indeed the reason for its existence, is to provide for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin. It provides no other general public services, such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body. App. 86. There are no towns, shops, hospitals, or other facilities designed to improve the quality of life within the district boundares, and it does not have a fire department, police, buses, or trains. *Ibid* Id. at 728-729.

B.

The decision of this Court in *Salyer, supra,* resulting from a careful analysis of the governmental powers possessed by the Tulare Water District demonstrates the utility of

such an analysis in cases which involve the application of the one-person-one-vote rule to cooperative governmental efforts. An assessment of the powers possessed by the boards of education of Connecticut regional school districts must lead to the conclusion that the one-person-one-vote rule is not applicable to the election of members of such boards.

In Connecticut the respective powers of the school district, and its governing body, the school board, are carefully delineated and distinguished by the following state statutes: 10-46, 10-47, 10-51, 10-53, 10-56, 10-60, 10-220, 10-221, 10-240, 10-241, 10-241a, 10-242, and 10-262. General Statutes Section 10-240 provides that:

> Each town shall maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter.

The intent of Section 10-240 was to transfer control of all the public schools within the town to the town itself, with each town constituting a separate school district. See *Keegan* v. *Town of Thompson,* 103 Conn. 418, 130A. 707 (1925). *Second School District of Glastonbury,* 86 Conn. 590, 86A. 577 (1913). General Statutes Section 10-241 provides that "(e)ach school district shall be a body corporate" with certain powers, including the power to lay taxes. Section 10-242 establishes the annual town meeting as the annual school district meeting.

The duties of the school board as distinct and separate from the power vested solely in the school district, are found in Conn. Gen. Stat. Section 10-220 which provides that boards of education shall maintain in their several towns good public elementary and secondary schools and shall promote the educational interests of the State. The

terms "school district" and "school board" are not used interchangeably in the statutes and while, for example, school districts in Connecticut do have the power to levy and collect taxes, it is clear that Connecticut school boards do not possess such power.

When the Connecticut legislature adopted its statutory scheme for the creation of regional school districts, the distinction between the powers possessed by the school district and those possessed by the school board was maintained and made a part of the regional school laws. Thus Conn. Gen. Stat. Section 10-56 provides in part:

> A regional school district shall be a body politic and corporate with power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum.

The powers enumerated in Section 10-56, powers which may be described as important governmental powers, are vested in the regional school *districts,* i.e., in the voters of such districts qualified to vote at the regional school district meeting. They are *not* possessed by regional school boards. The primary function of the regional school board is to administer the affairs of the regional school district. In addition, while Section 10-60 of the Connecticut General Statutes refers to a power to issue bonds as provided in Section 10-56, a reading of that statute makes clear that the power to authorize the issuance of bonds lies exclusively with the voters of the school district at the regional school district meeting. Indeed, to borrow money at all, the regional board of education must have the authorization of

a majority of the region's voters present at a regional district meeting called specifically for the purpose of obtaining such authorization. And, while a regional board of education has the duty to prepare an estimated budget for the region, the power to *adopt* a budget lies exclusively with the voters at a regional school district meeting as provided in Section 10-51.

In Connecticut, it is the regional school district, operating through the school district meeting, which possesses general governmental powers, which powers are exercised in accordance with the one-person-one-vote principal. The lack of such powers in regional boards of education in Connecticut clearly exempts them from this constitutional mandate.[1]

The distinction between the essentially administrative powers possessed by regional school boards in Connecticut and the broad governmental powers vested in the voters of regional school districts and exercised at the district meeting is readily discernible upon a reading of the relevant statutes. These statutes evidence a legislative intent that Connecticut's traditionally autonomous towns retain some control of the administration of their local schools, even upon regionalization. The vehicle for retention of such control is a statutory scheme which permits towns equal representation on the regional school board while, at the same time, vesting the region's voters with the district's important governmental powers, which powers they exercise at the regional district meeting, on a one-person-one-vote basis. The result is a mechanism of local government meeting legitimate local needs without diluting the vote of the regional school district voters when it comes to the exercise of important governmental functions.

1. Judge Oakes' opinion in the Court of Appeals decision recognizes the Regional Board's limited power to propose and initiate in the area of school financing with the ultimate and final authority in the voters to approve or disapprove such proposals (See Appendix Page 6a).

Residents of large and small towns alike benefit economically from the cooperative educational effort which regionalization brings: a combining of resources among towns to provide for more efficient school operation with a resultant improvement in educational programs. In addition, regionalization is encouraged by the state through the legislative provision for a greater portion of state aid (through the "average daily membership grant") to regional school districts as opposed to local school districts, thus easing the tax burden of local towns. (Conn. Gen. Stat., Section 10-262). The legislative intent to encourage regionalization is further evidenced by the requirement found in Conn. Gen. Stat. Section 10-39 which requires the State Board of Education to promulgate regulations setting standards governing the formation of regional school districts with respect to those factors which bear on "the achievement of more efficient administration of a school district and efficacious education of the pupils therein." And although each member town is required to have at least one representative on the regional board of education, there can be no doubt that the otherwise unfettered discretion towns have in apportioning membership on the board upon formation of the district greatly encourages regionalization. (General Statutes, Section 10-46).

It is, of course, true that after *Avery*, a mechanism of local government which has general governmental authority cannot be comprised of officers who are elected on other than a one-person-one-vote basis even if it meets legitimate local needs. But, even this Court's decision in *Hadley* does not require the application of the one-person-one-vote rule to all regional school administration schemes without regard to their differences and unique characteristics. Such a non-discriminatory application would unduly discourage the development of cooperative governmental efforts in the area of public education and necessitate the imposition of

constitutional requirements beyond those laid down in *Avery*.

Since the legislative scheme for the creation of regional school districts in Connecticut does not result in regional school boards with general governmental powers, the one-person-one-vote principle should not be found applicable to election to membership on such boards.

Respectfully Submitted,

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APPENDIX I

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 845, 898-99, 921-22—September Term, 1974.

(Argued June 6, 1975 Decided July 23, 1975.)

Docket Nos. 75-7001, 75-7009, 75-7015, 75-7039-40

JOHN E. BAKER and GERALDINE S. GEORGE,
Appellees,

v.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, JAMES BERRY, SIDNEY SVIRSKY and JEAN HANNA,
Appellants.

JOSEPH M. SCOTT, SR.
Appellee,

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, *et al.*,
Appellants.

B e f o r e—SMITH, ANDERSON and OAKES, *Circuit Judges.*

Appeal from a decision of the United States District Court for the District of Connecticut, Jon O. Newman, *Judge,* which held on motion for summary judgment that certain Connecticut regional school boards performed a range of activities sufficiently extensive to require the application of one person-one vote principles. Held that not-

withstanding the fact that the boards in question could neither levy taxes nor issue bonds, their powers were governmental in nature, thus requiring that election to the boards be in accordance with one person-one vote principles.

OAKES, *Circuit Judge:*

At issue in this appeal is the applicability of one person-one vote principles (*Reynolds* v. *Sims*, 377 U.S. 533 (1964), and *Wesberry* v. *Sanders*, 376 U.S. 1 (1964)) to the election of school board members in two Connecticut regional school districts.[1] The districts in question are each comprised of towns with substantial population differences, but, as presently organized, each participating town has an *equal* number of elected representatives serving on the regional school board and voting with equal weight. The United States District Court for the District of Connecticut, Jon O. Newman, *Judge*, relying on *Hadley* v. *Junior College District*, 397 U.S. 50 (1970) (trustees of a junior college school district performing governmental functions must be elected in accordance with one person-one vote standards); *Avery* v. *Midland County*, 390 U.S. 474 (1968) (applying one person-one vote standards to the election of county officials); *Rosenthal* v. *Board of Education of Central High School District #3*, 497 F.2d 726 (2d Cir. 1974) (finding a substantial federal question presented by a requested application of one person-one vote principles to an elected school board which had the power to issue bonds and propose taxes); *Leopold* v. *Young*, 340 F. Supp. 1014 (D. Vt. 1972) (applying one person-one vote standards to a school board with substantial public functions),

1. A number of other districts throughout Connecticut will presumably be affected by this decision since most, although not all, of Connecticut's regional boards are not apportioned on the basis of one person-one vote. The statutes under which regional school districts were created did not require malapportionment, but permitted towns to agree among themselves on the terms of their consolidation.

held, on motion for summary judgment, that the school boards in question performed a range of governmental activities sufficiently extensive to require the application of one person-one vote principles.[2] We affirm.[3]

The facts presented by these two consolidated appeals are the same in all significant aspects. The school district in *Scott*, Connecticut Regional District No. 14 (Nonnewaug), is comprised of two towns, Woodbury (population 5,869) and Bethlehem (population 1,923). As of May, 1973, 1,887 pupils were attending the school district with 1,385 from Woodbury and 492 from Bethlehem. For each of the three years ending with 1973-74, Woodbury contributed to the regional district budget in an amount equal to two and one-half times the amount contributed by Bethlehem. Each of the towns, however, is equally represented on the regional school board by four members.

The school district in *Baker* is comprised of three towns, Bethany (population 3,857), Woodbridge (population 7,673), and Orange (population 13,524). The average[4] number of pupils in the district is 3,377, with 543 pupils from Bethany, 998 from Woodbridge and 1,835 from Orange. Orange contributed in 1972-73 55.04 per cent of

2. In fashioning a remedy for these constitutional violations, Judge Newman, whose opinion is unpublished, granted declaratory relief only. His denial of injunctive relief was premised on his unwillingness "to disrupt on-going educational activities pending legislative action." In response to Judge Newman's decision, we are advised, the Connecticut General Assembly has enacted contingency legislation which would apply one person-one vote principles to school districts, while providing that towns so inclined may withdraw from regional school districts. (H.R. Bill No. 6596.)

3. Jurisdiction is grounded upon 28 U.S.C. § 1343(3), and injunctive and declaratory relief was sought under 42 U.S.C. § 1983, 28 U.S.C. § 2201. A three-judge court is not required as there is no facial attack on the Connecticut statutes which create regional boards, and any special acts involved relate only to the particular district involved and hence are not of statewide applicability.

4. An average student census was compiled from the actual daily membership as of June, 1973; October, 1973; and February, 1974.

the total school budget, with Bethany's share amounting to 15.62 per cent and Woodbridge's 29.34 per cent. However, each of the three towns is equally represented on the regional board by three members. In both districts, the members of the boards are selected through an elective process.[5]

Plaintiffs-appellees in both *Scott* and *Baker* are residents, taxpayers and electors of Woodbury and Orange respectively,[6] who claim that the present apportionment on their regional boards of education dilutes their voting power and deprives them of the equal protection of the law. The critical question on this appeal therefore is whether these school boards are elective bodies performing regulatory functions of a kind that can be characterized as governmental. *Hadley* v. *Junior College District,* 397 U.S. at 53-54. An affirmative answer to this question requires the additional finding that the boards are constructed unconstitutionally, since all parties concede that their members are not elected according to strict one person-one vote principles, nor do they vote in accordance with any kind of weighted formula which would reflect the population differences in the towns they represent.

The towns in *Scott* elect members directly to the school board; the towns in *Baker,* however, maintain that their regional board is not elective in the sense the Supreme Court intended for application of the one person-one vote principle. The essence of this claim is that the board

5. See text at note *7 infra.*

6. The *Baker* appellants maintain that this court's jurisdiction has been improperly invoked through "collusive joinder." Their theory seems to be that voters of the town are not the real parties in interest here. Fed. R. Civ. P. 17(a). It is, however, the electors whose vote is being diluted and as such their interests are quite properly before the court. This is clearly not a case where collusion has been used to manufacture diversity jurisdiction.

members are "appointed" through a "legislative" town meeting[7] rather than elected through a "popular election." We find no merit to this line of argument. While the forum for selecting board members was a town meeting, any person who was an elector of the town had the right to cast a vote at the meeting, and the majority prevailed. The suggested distinction is one of form, not substance.

On the question whether the board is governmental in character, appellants make much of the powers which the school boards lack. By reading *Hadley* v. *Junior College District* as narrowly as possible, they maintain that, since the Connecticut regional boards lack the powers to levy and collect taxes and to issue bonds, then their powers are not sufficiently broad or general to be governmental. But as Judge Newman recognized in his opinion below, "[t]he proper question is rather whether the power the Boards *do* have, in fulfilling what 'has traditionally been a vital governmental function,' *Hadley* v. *Junior College District,* 397 U.S. at 56, make it reasonable to describe the board members as 'governmental officials in every relevant sense of the term.' *Ibid.*"

The powers of Connecticut's regional school districts are detailed in what is now Chapter 164 of the Connecticut General Statutes,[8] with Conn. Gen. Stats. § 10-47 providing as follows:

7. In the traditional town meeting, a moderator is chosen by the assembled electors of the town, and thereafter the meeting is conducted as if it were a parliamentary body.

8. The *Baker* appellants maintain that there are material facts in issue concerning the powers of the boards so as to preclude a summary judgment. Because the regional boards' powers are statutory and are for our purposes unambiguous summary judgment was properly rendered in the present case. *See Leopold* v. *Young,* 340 F. Supp. at 1015.

> Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and and personal property for the purposes of the regional school districts. . . .

In the area of school financing, a regional board may authorize bond anticipation notes for periods of up to four years, and may treat the proceeds of the notes as other school districts or municipalities. Conn. Gen. Stats. § 10-56(c)-(d). In addition, the board may also borrow money for periods up to five years. Conn. Gen. Stats. § 10-60. While such actions by the board must be *approved* by the voters of the regional district in a referendum, it is or should be clear that this does not substantially undercut the significance of the boards' function. As stated in the amicus brief of the town of New Hartford, "*whether* to propose a bond ordinance, for what *purpose, when,* for *how much,* and in what *form* are all within the exclusive jurisdiction of the regional board." While the voters have the final word, what they ratify or disapprove can be only what the board decides to present to them. *See also Leopold* v. *Young, supra.*

Similarly, with respect to the budget-making process, the board has the exclusive power to initiate and propose. The voters may choose not to ratify, but it is within the sole power of the board to draw up the budget, and if it

is disapproved, the board then decides whether to amend and how to amend. Conn. Gen. Stats. § 10-51.

In addition, the regional school boards hire and fire teachers, supervise and discipline students, and in general manage all of the schools within their district.[9] As such, there can be no question but that the board members

> perform important governmental functions within the districts and . . . these powers are general enough and have sufficient impact throughout the district to justify the conclusion that [one person-one vote] should be applied here.

Hadley v. *Junior College District,* 397 U.S. at 53-54.

With respect to collective bargaining agreements, again the contract is negotiated by the board; a district meeting must ratify the board's action only if the chief executive officer of a constitutent town requests that a meeting be called. Conn. Gen. Stats. § 10-153d.

The power to tax is not a sine qua non to a determination that a local board serves a governmental function. The regulatory and supervisory powers possessed by the regional boards here at issue are sufficiently broad to be classified as governmental activity. *See generally Powers* v. *Maine School Administrative District No. 1,* 359 F. Supp. 30 (D. Me. 1973); *Leopold* v. *Young, supra.*[10]

Appellants' last line of argument focuses upon the Supreme Court's decisions in *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District,* 410 U.S. 719 (1973),

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9. Nor is this a complete list of the boards' powers and duties. The boards also have duties in connection with school curriculum, transportation and a wide range of support services. In short, this is not a case like *Sailors* v. *Board of Education,* 387 U.S. 105 (1967), where an appointed school board, whose duties were largely administrative, was exempted from application of one person-one vote principles.

10. Nor does having the power to tax make a given body governmental in nature. *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District,* 410 U.S. 719 (1973).

and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973), to diminish the force of *Hadley*. In *Salyer* and *Toltec* the Court held that one person-one vote principles did not apply to the election of members of the governing board of a California water and a Wyoming watershed district. Since the districts in issue in *Salyer* and *Toltec* had a "special limited purpose" and since the districts' action had a substantially "disproportionate effect . . . on landowners as a group," 410 U.S. at 728, 410 U.S. at 744, it was acceptable for the officers of the district to be elected by weighted vote of the district's landowners. The regional school boards' impact is general and related to all voters of the towns as such. In *Salyer*, the Court was careful to note that it was the land which was being benefited and the landowners only paying the costs; the Court also emphasized that the water district "provides no other general public services *such as a school*." *Id.* at 728-29 (emphasis added). Here we have school districts in which those towns which are paying the most for the districts' support have to accept a diluted vote[11] in the running of the schools. *Salyer* and *Toltec* are simply not relevant. The boards here are elective bodies serving governmental functions. They must be organized to reflect one person-one vote principles.

Judgment affirmed.

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11. It is of no aid to appellants that the manner in which the regional boards were to be organized was voted upon and accepted by a majority of the voters of each of the towns in the district. As the Supreme Court held in *Lucas* v. *Forty-fourth General Assembly of Colorado*, 377 U.S. 713, 736-37 (1964):

> An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act.

Nor is the fact that the districts were formed pursuant to agreement of the towns. *See Leopold* v. *Young, supra.*

APPENDIX II

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-third day of July one thousand nine hundred and seventy-five

Present—Hon. J. JOSEPH SMITH,
Hon. ROBERT P. ANDERSON,
Hon. JAMES L. OAKES, *Circuit Judges.*
75,7001, 75-7009, 75-7015, 75-7039, 75-7040.

JOHN E. BAKER, and GERALDINE S. GEORGE,
Appellees,

v.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, MRS. MARION P. CROCCO, MR. GEORGE P. DAVIS, JR., MRS. JEAN VIRSHUP, MR. LOUIS KUTZNER, MRS. JEAN S. MIDDLETON, DR. FREDERICK STEIGERT, MRS. FRANK GRUSKAY, DR. HERBERT HERSHENSON, and MR. LEONARD LOHNE, individually and in their official capacities as members of the REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, DOUGLAS J. SMITH, individually and in his official capacity as Acting Superintendent OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, MR. FREDERICK ROSS, MR. HENRY W. BENEDICT, MR. HARRY I. WILSON, as Treasurers respectively of the Towns of Orange, Bethany, and Woodbridge, and MRS. MARJORIE B. WAHNQUIST, MR. SIDNEY SVIRSKY and MRS. JEAN HANNA, as Town Clerks respectively of the Towns of Orange, Bethany and Woodbridge,

Defendants,

REGIONAL HIGH SCHOOL DISTRICT No. 5 and REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT No. 5, JAMES BERRY, as Treasurer of the Town of Woodbridge (succeeding HARRY I. WILSON, deceased)

Defendants-Appellants,

JOSEPH M. SCOTT, SR.,

Plaintiff-Appellee,

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT No. 14, THE TOWN OF WOODBURY, CONNECTICUT, THE TOWN OF BETHLEHEM CONNECTICUT, TOWN OF WOODBURY, and SAMUEL J. SWENDSEN, FIRST SELECTMAN, TOWN OF BETHLEHEM,

Defendants

NONNEWAUG REGIONAL SCHOOL DISTRICT No. 14, TOWN OF BETHLEHEM,

Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to be taxed against the appellants.

APPENDIX III

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. B-538
Civil No. N-74-75

JOSEPH M. SCOTT, SR.

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT No. 14, *et al.*,

JOHN E. BAKER, *et al.*

v.

REGIONAL HIGH SCHOOL DISTRICT No. 5, *et al.*

MEMORANDUM OF DECISION

These motions for summary judgment present identical questions concerning the applicability of one person-one vote principles to boards of education of Connecticut's regional school districts. See generally, Conn. Gen. Stat. §§ 10-39 to 10-63i. Plaintiff in Civil No. B-538 (*Scott*), a resident, taxpayer, and elector of the Town of Woodbury, seeks the reorganization of the Board of Education of Nonnewaug Regional School District No. 14, which administers the joint elementary and secondary school systems of the Towns of Woodbury and Bethlehem.[1] In Civil No. N-74-75 (*Baker*),

1. Plaintiff Scott seeks to pursue the suit as a class action. Since "any equitable relief to which [plaintiff] may be entitled would benefit all persons similarly situated, there is no compelling reason to designate a class." *Bridgeport Guardians, Inc.* v. *Members of Bridgeport Civil Service Commission*, 354 F. Supp. 778, 783 (D. Conn. 1973), *modified on other grounds*, 482 F.2d 1333 (2d Cir. 1973). Class action designation is accordingly denied.

plaintiffs are residents, taxpayers, and electors of the Town of Orange, and they seek re-organization of the Board of Education of Regional High School District No. 5, which includes the Towns of Orange, Bethany and Woodbridge.

The defendants in *Scott* are Regional District No. 14, the chairman of the District's Board of Education, the Towns of Woodbury and Bethlehem, and the First Selectman of each Town.[2] In *Baker* the defendants are Regional District No. 5, its Board of Education and the members of the Board, the District's superintendent, and the treasurers and clerks of the Towns of Orange, Woodbridge and Bethany.

In addition, the Towns of Bethany and Woodbridge have moved to intervene as defendants in *Baker*. They argue that they have significant interests not adequately protected by the present defendants, and that only they are properly situated to protect the interests of their residents and electors.[3] However, the elected representatives of the voters who are already parties to this action are equal to that task. *Cf. Powers* v. *Maine School Administrative District No. 1*, 359 F.Supp. 30(D. Me. 1973); *Leopold* v. *Young*, 340 F.Supp. 1014 (D. Vt. 1972). The Towns as such do not have any substantial interest in the controversy; they are merely election districts from which board members are chosen. *Cf. Butterworth* v. *Dempsey*, 229 F.Supp. 754, 798-99 (D. Conn. 1964) (three-judge court), *aff'd sub nom. Town of Franklin* v. *Butterworth*, 378 U.S. 562 (1964). See *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964). Moreover, an appropriately fashioned remedy will adequately protect the Towns. See 3A Moore's Federal Practice ¶ 19.07-2[2]. The motions to intervene are denied.

2. The Town of New Hartford has moved to appear in *Scott* as *amicus curiae*. The motion is granted.

3. Other defendants have raised the same issue in the form of an affirmative defense alleging that the Towns are necessary parties without whose joinder the action cannot go forward, Fed. R. Civ. P. 19.

In both actions plaintiffs argue that the present apportionment of membership on their respective regional boards of education impermissibly dilutes their voting power and deprives them of the equal protection of the laws. They claim jurisdiction under 28 U.S.C. §1343(3), and request a variety of injunctive relief pursuant to 42 U.S.C. §1983. In *Scott* the parties have stipulated to the material facts,[4] and both actions are before the Court on motions for summary judgment.[5]

Preliminarily, the *Baker* defendants dispute this Court's jurisdiction and urge that a three-judge court must be convened to hear the suit. They rely primarily on Judge Tim-

4. Defendants in *Baker* note that in their action the parties have not entered into a stipulation and urge that summary judgment is inappropriate because a triable issue of fact is presented by disagreement about the powers of their Board. There is no dispute, however, that the powers of the Boards are defined by the Connecticut General Statutes, compare *Education/Instruccion, Inc.* v. *Moore*, F.2d (2d Cir. 1974), Slip op. at 5321 (August 21, 1974) (Oakes, J. dissenting); the only disagreement is whether as a matter of law the powers conferred by statute are sufficient to bring the Boards within apportionment requirements.

5. The *Baker* defendants oppose summary judgment on the ground that the plaintiffs are not real parties in interest, Fed. R. Civ. P. 17(a), and on the additional ground that jurisdiction of this Court has been invoked by "improper or collusive joinder," 28 U.S.C. § 1359. Rule 17(a) is designed to make certain that an action is brought by one who, by the substantive law, has the right sought to be enforced. *Rackley* v. *Board of Trustees of Orangeburg Regional Hospital*, 35 F.R.D. 516 (E.D. S.C. 1964); 3A Moore's Federal Practice ¶ 17.07, text at n. 1. But as this opinion explains, text following n. 2, *supra*, the right sought to be protected in this case is that of the Orange electors in an undiluted vote. Section 1359 is similarly designed to prevent collusive attempts to "manufacture" diversity jurisdiction, *O'Brien* v. *Avco Corporation*, 425 F.2d 1030 (2d Cir. 1969). It thus has no application in the present context. Moreover, even if, as defendants allege, officials of the Town of Orange solicited plaintiffs' participation, and even if the Town of Orange is paying the expenses of the litigation, it does not follow that there has been the kind of "collusion" at which the statute is directed *Allstate Ins. Co.* v. *Lumbermens Mutual Casualty Co.*, 204 F.Supp. 83 (D. Conn. 1962).

bers' tentative opinion in *Giordano* v. *Amity Regional High School District #5*, 313 F.Supp. 403 (D. Conn. 1970). The simple answer to this claim is one not raised by the parties in *Giordano* (although recognized as persuasive by Judge Timbers, 313 F.Supp. at 408-09, n. 9), but pressed strenuously by all plaintiffs in the present actions. Plaintiffs here do not seek to enjoin enforcement of a statute of statewide application. Compare *Hadley* v. *Junior College District of Metropolitan Kansas City*, 397 U.S. 50, 57 (1970), with *Leopold* v. *Young*, 340 F.Supp. 1014, 1017 (D. Vt. 1972). The Connecticut statutory system at issue "does not require malapportionment, but only permits towns to agree among themselves on the terms under which they will consolidate, including the apportionment of school board members." *Ibid.* See *C. Wright, Handbook of the Law of the Federal Courts* 190, text at n. 21 (1970).

The situation is no different as to Special Act 74-69, regardless of the interpretation placed on it. If, as plaintiffs urge, it merely sets the time at which board members will take office, there is no question of enjoining its enforcement. And even if, as defendants urge, it represents a "fixing" of the present apportionment of board members, it applies by its terms only to District No. 5 and is therefore not a statute of statewide application.

Moreover, as the remainder of this opinion makes clear, the law has progressed considerably since *Giordano*, and what Judge Timbers concluded was a question requiring three judges for resolution is now so clearly settled that the issue lacks the substantiality requiring a three-judge court. In such circumstances a single judge possesses the power to dispose of the case. *Bailey* v. *Patterson*, 369 U.S. 31 (1962); *Anderson* v. *Nemetz*, 474 F.2d 814 (9th Cir. 1973); *Consumer Party* v. *Tucker*, 364 F.Supp. 594, 604 (E.D. Pa. 1973). See *Utica Mutual Ins. Co.* v. *Vincent*, 375 F.2d 129, 131 n. 1 (2d Cir. 1967).

Regional District No. 14 began operating on July 1, 1968, having been approved several months earlier by separate referenda conducted in Woodbury and Bethlehem. The District's board consists of eight members, with four chosen by the electors of each of the two member towns. Plaintiff Scott bases his objection to the equal division of the membership on a comparison of the populations of the two communities. According to the 1970 census, Woodbury's population was 5,869 and Bethlehem's was 1,923, and of the 1,887 pupils attending school in the District as of May, 1973, 1,385 were from Woodbury and 492 were from Bethlehem. Finally, for each of the three consecutive academic years ending with 1973-74, Woodbury's contribution to the Regional District's budget was approximately two and one-half times as large as Bethlehem's. In short, plaintiff complains that Woodbury has roughly 75% of the joint district's population and pupils, and contributes a similar proportion of the joint district's budget, but has only 50% of the votes on the body that administers the District.

The comparable statistics for District No. 5, which commenced operations in the 1952-53 academic year, reflect a similar imbalance. Orange, the largest of the three towns, has approximately 55% of the population, 55% of the student body, and contributes 55% of the District's budget. Bethany accounts for approximately 15% of each category, and Woodbridge 30%. Each Town, however, elects three members of the nine-member joint Board of Education.

Defendants do not dispute the contention that the votes of the Woodbury and Orange electors are in fact substantially diluted. *Cf. Powers* v. *Maine School Administrative District No. 1, supra*, 359 F.Supp. at 35. Nor do they seriously contest the proposition that because the members of the Regional Boards are chosen by election[6] the one per-

6. The *Baker* defendants do suggest that the town meetings from which their Board members are elected are exercises of legislative

son—one vote rules must apply. *E.g., Hadley* v. *Junior College District of Metropolitan Kansas City,* 397 U.S. 50, 54 (1970); *Rosenthal* v. *Board of Education of Central High School District No. 3 of Town of Hempstead,* 497 F.2d 726, 729 (2d Cir. 1974).

On the merits of the motions for summary judgment defendants press only two contentions. The first is that the Regional Boards whose composition is at issue perform an insufficiently broad range of governmental functions and are therefore not the type of elective bodies to which apportionment requirements apply. Compare *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District,* 410 U.S. 719, 728-29 (1973). Both Regional Boards lack several significant powers that were possessed by the junior college board of trustees in *Hadley,* and defendants contend that these were essential both in *Hadley* and in similar cases. These include the power to levy and collect taxes, to issue bonds, and to pass on petitions to annex school districts and acquire property by condemnation.

Defendants' approach, enumerating the powers that these Regional Boards lack, is misconceived. *Cf. Hadley* v. *Junior College District, supra,* 397 U.S. at 53-54; *Rosenthal* v. *Board of Education, supra,* 497 F.2d at 728. The proper question is rather whether the powers the Boards *do* have in fulfilling what "has traditionally been a vital governmental function," *Hadley* v. *Junior College District, supra,*

power and not "popular elections" within the meaning of *Hadley,* and that one person-one vote requirements for that reason do not apply. Defendants do not dispute, however, that in each member town all registered voters are eligible to vote for board members, Conn. Gen. Stat. § 10-46(b). Nothing in *Hadley* indicates that the Court intended to limit its holding to elections of a particular type. On the contrary, Justice Black took pains to observe that at the center of each of the Supreme Court's reapportionment cases was "the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions." 397 U.S. at 54. To accept the consequences of defendants' characterization would be to exalt form over substance at the expense of the right to vote.

397 U.S. at 56, make it reasonable to describe the board members as "government officials in every relevant sense of that term." *Ibid.*

With the question thus posed, the answer becomes clear. The powers of the two Boards before this Court do not differ significantly from those of the Board in *Rosenthal, supra,* and the only question that troubled the Court of Appeals in *Rosenthal* was whether the manner of selection of board members was more nearly elective than it was appointive; it was obvious to the Court that if the board members were elected, their powers were sufficiently governmental to invoke one person-one vote requirements. 497 F.2d at 729, text at n. 10. As the Court of Appeals has more recently observed, "there was no question [in *Rosenthal*] that the body in question performed substantial governmental functions."[7] *Education/Instruccion, Inc.* v. *Moore,* —— F.2d ——, —— (2d Cir. 1974), Slip op. at 5320 (August 21, 1974). Compare, *e.g., Dameron* v. *Tangipahoa Parish Police Jury,* 315 F.Supp. 137, 138 (E.D. La. 1970). See also, *Regional High School District No. 3* v. *Town of Newtown,* 134 Conn. 613, 620-21 (1948).

Defendants' second argument relies on dictum in *Avery* v. *Midland County,* 390 U.S. 474 (1968). They suggest that regional districts are a form of educational innovation and are for that reason immune from judicial interference, even interference in the name of equal protection. Defendants contend that requiring equal apportionment will make it unlikely that smaller towns will join regional districts, and that a legitimate attempt by the State to provide for more efficient operation of schools and improved educational opportunity for students will thereby be frustrated.

In *Avery,* which held that elections for County Commissioners Court in Texas must be conducted in accordance

7. The *Rosenthal* Board also lacked the power to set taxes. 497 F.2d at 728, n. 7 and accompanying text.

with principles of voting equality, the Supreme Court acknowledged in passing that local governments are under immense pressures to solve local problems, and denied that such experimentation is foreclosed by the Constitution. The two cases cited by the Court, however, indicate that these observations were in no way intended to encourage retreat from the Constitutional imperative. *Sailors* v. *Board of Education,* 387 U.S. 105 (1967), exempted a board whose members were appointed and whose duties were administrative, and in *Dusch* v. *Davis,* 387 U.S. 112 (1967), the Court upheld residence requirements imposed on the *members* of a multicounty legislative body, finding that the voting power of the *electors* of the component counties was not diluted. Defendants express a legitimate concern in urging that there be no needless thwarting of experimentation with regional arrangements in general or in the field of education in particular. The desirability of such arrangements, however, cannot suspend the Fourteenth Amendment's apportionment requirements. If regional school districts are to be encouraged, it will have to be done by creative legislative authorization and cooperative local arrangements that resolve the competing large and small town interests within Constitutional standards. Although the Constitution leaves a great deal of room for legitimate experimentation and innovation, it also "imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among . . . districts of substantially unequal population." *Avery* v. *Midland County, supra,* 390 U.S. at 485-86.

The only question remaining is one of remedy. Plaintiffs in both actions have requested a broad range of coercive injunctive relief, both permanent and interlocutory. Plaintiffs have clearly established that they are entitled to a

declaratory judgment, but it does not follow that the requested permanent mandatory injunction is also appropriate at this time. While it is true that the violations could be cured without legislative action, compare *Hadley* v. *Junior College District, supra,* the relatively few options presently available to defendants were designed by a legislature that may well have thought that regional districts would be free from one person-one vote requirements. Respect for the pre-eminence of the states in matters of educational policy requires, therefore, that the legislature be given a reasonable opportunity to develop new alternatives in light of this Court's declaration before an injunction issues requiring defendants to act. *Cf. Powers* v. *Maine School Administrative District No. 1, supra.* For example, the legislature may want to consider the procedures for forming new districts and for dissolving, or permitting withdrawal from, present districts now that one person-one vote principles are applicable. The General Assembly is to convene in January and should have at least two months to consider whether it wishes to frame legislation responsive to the concerns of these and other aspects of regional districts. Permanent injunctive relief will therefore be denied, without prejudice to a renewed application after March 1, 1975. At any time prior to that date, any parties may submit to the Court their proposals for reapportionment plans and implementation procedures, which the Court will review before formulating a final decree after March 1, 1975.

With respect to the requests for interim relief pending entry of a final decree, the Court is not willing needlessly to disrupt on-going educational activities pending legislative action. The requested decrees would work a substantial departure from the status quo, and the request for such relief is therefore denied. Plaintiffs are free to seek supplemental interim relief if it should appear that the

Regional Districts are about to undertake substantial building programs or make other substantial capital commitments.

Accordingly, plaintiffs' motions for summary judgment are granted,[8] and judgment will enter declaring that the allocation of membership on the Boards of Education of Nonnewaug Regional School District No. 14, and of Regional High School District No. 5, deprives plaintiffs of the equal protection of the laws in violation of the Fourteenth Amendment.

Dated at New Haven, Connecticut, this 22 day of November, 1974.

JON O. NEWMAN
United States District Judge

8. The motion of defendants in *Scott* is correspondingly denied.

APPENDIX IV

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. B-538
Civil No. N-74-75

JOSEPH M. SCOTT, SR.

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, *et al.*,

JOHN E. BAKER, *et al.*,

v.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, *et al.*

JUDGMENT

The above cases having come on for consideration by the Court on plaintiffs' Motions for Summary Judgment and the Court having rendered its Memorandum of Decision, under date of November 22, 1974, granting said motions; and the Court having rendered its Ruling on Request for Rule 54(b) Certification, under date of January 3, 1975, finding that there is no just reason for delay and specifically directing the Clerk to enter judgment on the claims for declaratory relief,

It is ORDERED and ADJUDGED that judgment be and is hereby entered declaring that the allocation of membership on the Boards of Education of Nonnewaug Regional School Dis-

trict No. 14, and of Regional High School District No. 5, deprives plaintiffs of the equal protection of the laws in violation of the Fourteenth Amendment.

Dated at New Haven, Connecticut, this 8th day of January, 1975.

Supreme Court, U. S.
FILED
FEB 26 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Docket No. 75–528

Nonnewaug Regional School District No. 14,
Town of Bethlehem,

Petitioners,

vs.

Joseph M. Scott,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Opinion Below

The opinion of the Court of Appeals for the Second Circuit is reported sub nom *Regional School District No 5.* v. *Baker*, 520 F. 2d 799 (1975).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Docket No. 75–528

Nonnewaug Regional School District No. 14,
Town of Bethlehem,

Petitioners,

vs.

Joseph M. Scott,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Question Presented

Does the one-person one-vote rule apply to the election of members of the Board of Education of a regional school district created pursuant to the provisions of the Connecticut General Statutes.

Constitutional Provisions and Statutes

Constitutional Provisions: Fourteenth Amendment.

Statutes: Title 28, United States Code, Sections 1254(1) and Sections 1343(3); Title 42, United States Code, Section 1983; Connecticut General Statutes, Sections 10-46, 10-47, 10-51, 10-56, 10-60, 10-220, 10-221, 10-240, 10-241, 10-241a, 10-242, 10-262.

Rules: Rule 19, Supreme Court Rules.

Statement of the Case

Nonnewaug Regional School District No. 14 was formed on May 20, 1968, by a vote of a majority of the electors of the Towns of Woodbury and Bethlehem, Connecticut. The Nonnewaug Regional School District was organized pursuant to and now operates under the Connecticut General Statutes, pertinent sections of which are set forth in the Appendix to this brief. Among the enumerated powers and duties of a regional Board of Education are the power to purchase, lease or rent property for school purposes; to build, add to or equip the schools; to employ and dismiss teachers; to prescribe rules for the management, studies, classification and discipline of the schools; and to prepare the proposed district budget.

The Board of Education for the Nonnewaug Regional School District is composed of eight members, four each from the Towns of Woodbury and Bethlehem. The population of the Town of Woodbury, according to the 1970 United States Census of Population, was 5,869. Woodbury has an electorate of 3,653 and 1,385 pupil residents. According to the same census, the Town of Bethlehem has a population of 1,923. Bethlehem has 1,298 electors and 492 pupil residents. The pupil figures are as of May, 1973. Thus, the Town of Woodbury has approximately three times the number of citizens, electors and pupil residents as the Town of Bethlehem. Citizens of the Town of Woodbury have also contributed approximately three times

the amount of revenue to the Nonnewaug Regional School District as have the citizens of the Town of Bethlehem.

Plaintiff, a citizen and taxpayer of the Town of Woodbury, brought suit in the United States District Court for the District of Connecticut for a permanent injunction requi ing the reorganization of the Nonnewaug Regional School District to provide equal representation on the Board of Education for all electors of the Towns of Woodbury and Bethlehem. Judge Jon O. Newman granted plaintiff's motion for summary judgment on the grounds that the lack of equal representation on the Board of Education deprived the electors of the Town of Woodbury of equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

The defendants appealed the District Court decision, and the decision was affirmed by the United States Court of Appeals for the Second Circuit. The decisions of the District Court and the Court of Appeals are set forth in the Appendix to the petition for writ of certiorari.

ARGUMENT

The One-Person, One-Vote Constitutional Principle is Applicable to the Election of Members of the Board of Education of a Regional School District Created Under the Connecticut General Statutes.

The District Court, per Newman, J, and the unanimous Court of Appeals, per Oakes, J both found that the powers exercised by the petitioner Nonnewaug Regional School District were substantial and governmental and held that *Hadley* v. *Junior College District* 397 U.S. 50 (1970) governed, requiring reapportionment of the Boards of Education in accordance with the "one-person, one-vote" principle of equal protection. Both courts held that the exception to "one-person, one-vote" in *Salyer Land Co.* v. *Lake Basin Water Storage District* 410 U.S. 719 (1973) was inapplicable based on a careful weighing of the governmental functions involved in each case.

Petitioner argues that because many of the duties of its Board are "administrative" and the Board lacks some "general governmental" powers, *Hadley* is inapplicable. Petitioner is wrong. The Junior College District in *Hadley* performed very similar administrative duties, as does any governmental unit. And any unit of local government will have severely circumscribed governmental powers. "One-person, one-vote" is required as a matter of equal protection of the law because of the powers the elected officials do exercise, not those they lack, *Avery* v. *Midland County* 390 U.S. 474 (1968). Here the Regional Board of Education has sole power to develop, propose, allocate and reallocate the schools financing including bonding and budget, Conn. Gen. Stats. Sections 10-51, 10-51a, 10-50a, 10-56(c) and (d) and 10-60. Set out in the Appendix to this brief. See *Board of Education of Ellington* v. *Town of Ellington* 151 Conn. 1, 193 A2d 466 (1963). Other relevant powers and statutes are set out in the Appendix to respondents brief in *Regional School District* v. *Baker* No. 75-496, the companion to this case. It also has "all the powers and duties conferred upon boards of education by the general statutes . . ." Conn. Gen. Stats. Section 10-47, including:

> Such boards may purchase, lease or rent property for school purposes and as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and personal property for the purposes of the regional school districts. The regional school district annual meeting shall be the district meeting at which the annual budget is first presented for adoption and shall be held the first Monday or the first Tuesday in May. The boards may convene special district meetings when they deem it necessary. District meetings shall be warned and conducted in the same manner as are town meetings. For such purposes, the chairman of the board shall have the duties of the board of selectmen and the secretary shall have duties of the town clerk.

Plainly the Regional School board exercises substantial governmental powers, as the lower courts found.

The petitioner has not attempted to show any legitimate public purpose rationally advanced by the different voting powers involved, and respondents are aware of none. See *Reynolds* v. *Sims* 377 U.S. 533 (1964). Thus petitioners great reliance on *Salyer Land Co.* v. *Tulare Water District, supra,* is entirely misplaced.

The Board is directly elected at a regular election. It plainly exercises governmental as opposed to proprietary functions which are not merely administrative. Compare *Hadley* v. *Junior College District, supra,* with *Sailors* v. *Board of Education of the County of Kent,* 387 U.S. 105 (1967). Thus the one-person, one-vote rules apply and the lower courts correctly so held.

Respondent knows of no conflicting Circuit court authority. The applicable federal law is settled. The petitioner has failed to meet any of the criteria of Rule 19(b) of the Rules of this Court. It raises no more, and arguably less, substantial questions than those in *Regional High School District No. 5.* v. *Baker* No. 75-496 (petition for a writ of certiorari pending) its companion case below. The petition for a writ of certiorari to the Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

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This is to certify that on the day of November 1975, copies of the foregoing were mailed, postage prepaid to

APPENDIX

CONNECTICUT GENERAL STATUTES

§ 10-39. Temporary regional school study committee

(a) Two or more towns may establish a regional school district in accordance with the provisions of this part and the regulations promulgated thereunder. The state board of education shall promulgate regulations setting standards to govern the formation of regional school district with respect to the minimum and maximum enrolment, the geographical limitations and other such factors which bear on the achievement of more efficient administration of a school district and efficacious education of the pupils therein.

(b) Two or more towns or regional school districts may, by vote of their legislative bodies, join in the establishment of a temporary regional school study committee, hereafter referred to as the committee, to study the advisability of establishing a regional school district, reported to the respective towns in accordance with section 10-43. In performing its duties, such committee may employ an architect to assist in estimating the cost of providing school facilities, an appraiser to establish the value of assets of each participating school district and such other professional consultants or personnel as may be needed, provided the committee shall not incur obligations which exceed the monies received pursuant to section 10-42. The committee shall continue until dissolved pursuant to section 10-43 but no longer than two years from the date of its organization unless the legislative bodies of the participating towns vote to extend the life of the committee for a period not to exceed two years.

(c) Two or more boards of education may conduct a preliminary study of the advisability of establishing a regional school district, and if their findings are affirmative, such boards of education, except as provided below, shall submit a written report to the chief executive officer in each town served by such boards. Within thirty days of the receipt of the report, such officer shall call a meeting of the legislative body of the town which shall consider the report and vote on the question of establishing a temporary regional school study committee pursuant to subsection (b) of this section. In the case of a regional board of education, such board shall call a meeting of the regional school district for such purposes.

(d) A regional school district may participate as a region in any study undertaken pursuant to subsection (b) or (c) of this section, provided such study is for the purpose of establishing a regional school district which may provide for the proposed district all programs under the general supervision and control of the state board of education. In the case of a preliminary study, the regional board of education shall submit the written report to a regional school district meeting called to consider the report and vote on the question of joining in the establishment of a temporary regional school study committee pursuant to subsection (b) of this section. A regional school district may vote to appoint five members to a temporary regional school study committee at a regional school district meeting. Two of such members shall be members of the regional board of education. The towns which are members of such regional school district shall be "participating" towns for the purposes of notice, reports and referenda under sections 10-41 to 10-43, inclusive, and section 10-45. If a new regional school district is established by the referenda, the board of education of the regional school district which participated in the study shall be deemed a town board of education for purposes of section 10-46a.

(e) Any temporary regional school study committee established before the passage of this act[1] shall continue its study in accordance with the procedures and mandates of this part, but shall not be required to change its membership. The provisions of section 10-42 shall apply.
(1969, P.A. 698, § 1, eff. June 24, 1969.)

§ 10-46. Regional board of education

(a) The affairs of the regional school district shall be administered by a regional board of education, which shall consist of not fewer than five nor more than nine members. Each member town shall elect at least one member. The committee report shall determine the number of members of such regional board and the representation of each town. The first members of such regional board of education shall be nominated and elected at a meeting of the legislative body of each town held within thirty days after the referendum creating the district. The regional board of education at its first meeting, called by the secretary of the state board of education within ten days from the time the last member town to appoint members to the regional board has done so, shall organize and the members shall serve until their successors are elected and qualify. At such meeting, the board shall determine the term of office of each member according to the following principles: (1) The term of office of each successor shall be four years; (2) to establish a continuity of membership, a system of rotation shall be used; if the board has an even number of members, one-half of such number shall be elected every two years and if the board has an uneven number of members, no more than a bare majority or a bare minority shall be elected every two years, except when the unexpired portion of the term of a vacated office must be filled; (3) the same system of rotation shall be used for election of the representatives of each member town, if possible; (4) if necessary, it shall be determined by lot which of the initial members shall serve the short terms: (5) at the first election of members in accordance with subsection (b) or (c) of this section, no more than half the offices held by initial board members shall be filled; (6) the offices held by the remaining initial board members shall be filled at the second election held in accordance with subsection (b) or (c) of this section. Thereafter, members of the board shall be nominated and elected in their respective towns in accordance with subsection (b) or (c) of this section as determined by the legislative body of each town.

(b) At least thirty days before the expiration of the term of office of any board member, a town meeting shall be held in accordance with chapter 90 to nominate and elect a successor. Any person who is an elector of such town may vote at such meeting. If a vacancy occurs in the office of any member of the regional board of education, the town affected, at a town meeting called within thirty days from the beginning of such vacancy, shall nominate and elect a successor to serve for the unexpired portion of the term in accordance with the above procedure.

(c) Board members shall be nominated and elected in the same manner as town officers in accordance with the provisions of title 9 except that (1) section 9-167a and parts II and III of chapter 146 shall not apply and (2) the board members so elected shall take office the first day of the month following the elections. If a vacancy occurs in the office of any member of the regional board of education, the legislative body of the town affected shall elect a successor to serve until the next general election, at which time a successor shall be elected to serve any unexpired portion of such term.

(d) All members of a regional board of education shall take office on the first day of the month following their election. Such board shall hold an organizational

meeting in the month following the last election of members thereof held in the member towns in any calendar year at which time the board shall elect by ballot from its membership a chairman, a secretary, a treasurer and any other officer deemed necessary and may annually thereafter elect such officers. In the case of a tie vote in the balloting for any officer, such tie shall be broken by lot. The treasurer shall give bond to the regional board of education in an amount determined by the members thereof. The cost of such bond shall be borne by the district.
(1967 P.A. 333 § 1, eff. June 8, 1967; 1969, P.A. 698, § 8, eff. June 24, 1969; 1971, P.A. 679, § 1, eff. July 6, 1971.)

§ 10-47 Powers of regional board

Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and personal property for the purposes of the regional school districts. The regional school district annual meeting shall be the district meeting at which the annual budget is first presented for adoption and shall be held the first Monday or the first Tuesday in May. The boards may convene special district meetings when they deem it necessary. District meetings shall be warned and conducted in the same manner as are town meetings. For such purposes, the chairman of the board shall have the duties of the board of selectmen and the secretary shall have the duties of the town clerk.
(1967, P.A. 113, § 1, eff. May 23, 1967; 1969, P.A. 698, § 10, eff. June 24, 1969; 1973, P.A. 73-539.)

§ 10-51. Fiscal year. Budget. Payments by member towns. Investment of funds. Temporary borrowing

(a) The fiscal year of a regional school district shall be July first to June thirtieth. Except as otherwise provided in this subsection, not less than two weeks before the annual meeting held pursuant to section 10-47, the board shall hold a public district meeting to present a proposed budget for the next fiscal year. Any person may recommend the inclusion or deletion of expenditures at such time. After the public hearing, the board shall prepare an annual budget for the next fiscal year, make available on request copies thereof and deliver a reasonable number to the town clerk of each of the towns in the district at least five days before the annual meeting. At the annual meeting on the first Monday in May, the board shall present a budget which includes a statement of (1) estimated receipts and expenditures for the next fiscal year, (2) estimated receipts and expenditures for the current fiscal year, (3) estimated surplus or deficit in operating funds at the end of the current fiscal year, (4) bonded or other debt, (5) estimated per pupil expenditure for the current and for the next fiscal year and (6) such other information as is necessary in the opinion of the board. Persons present and eligible to vote under section 7-6 may accept or reject the proposed budget except as provided below. No person who is eligible to vote in more than one town in the regional school district is eligible to cast more than one vote on any issue considered at a regional school district meeting or referendum held pursuant to this section. Any person who violates this section by fraudulently casting

more than one vote or ballot per issue shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disenfranchised. If the regional school district is comprised of four or more towns, the regional board of education may, in the call to the meeting, designate that the vote on the motion to adopt the budget shall be by paper ballots or by a "yes" or "no" vote on the voting machines in each of the member towns on the day following the district meeting. Two hundred or more persons qualified to vote in any regional district meeting called to adopt a budget may petition the regional board, in writing, at least three days prior to such meeting, requesting that any item or items on the call of such meeting, be submitted to the persons qualified to vote in the meeting for a vote by paper ballot or on the voting machines in each of the member towns on the day following the district meeting and in accordance with the appropriate procedures provided in section 7-7. If a majority of such persons voting reject the budget, the board shall, within two weeks thereafter and upon notice of not less than one week, call a district meeting to consider the same or an amended budget. Such meetings shall be convened at such intervals until a budget is approved. After the budget is approved, the board shall estimate the share of the net expenses to be paid by each member town in accordance with subsection (b) of this section and notify the treasurer thereof. With respect to adoption of a budget for the period from the organization of the board to the beginning of the first full fiscal year, the board may use the above procedure at any time within such period. If the board needs to submit a supplementary budget, the general procedure specified in this section shall be used.

(b) For the purposes of this section, "net expenses" means estimated expenditures less estimated receipts as presented in a regional school district budget. On the date or dates fixed by the board, each town in the district shall pay a share of the cost of capital outlay and current expenditures necessary for the operation of the district. The board shall determine the amount to be paid by each member town. Such amount shall bear the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the regional school district during the preceding school year bears to the total number of such pupils in all the member towns. Until the regional school district has been in operation for one year, such amounts shall be based on the average daily membership of pupils in like grade from each of such towns at any school at which children were in attendance at the expense of such towns during the preceding school year.

(c) The board shall deposit or invest temporarily any funds which are not needed immediately for the operation of the school district in any manner permitted school districts or municipalities in chapter 112. Any income derived from such deposits or investments shall be used at least semiannually to reduce the net expenses. The board shall use any budget appropriation which has not been expended by the end of the fiscal year to reduce the net expenses of the district for the following fiscal year. The board may borrow funds temporarily in anticipation of payments to be made to it by a member town or the state, for the operation of its schools.
(1969, P.A. 698, § 13, eff. June 24, 1969; 1971, P.A. 679, §§ 3, 4, eff. July 6, 1971.)

§ 10-53. Application of education statutes

All provisions of the general statutes relating to public education, including those providing state grants-in-aid, shall apply to each town belonging to a regional school district, provided, if the board of education of any regional school district provides

transportation to a regional school, such district shall be reimbursed by the state as provided in section 10-54. Any regional school district empowered to provide to the member towns all programs under the general supervision and control of the state board of education shall receive each year in addition to the amount of state aid under section 10-262 ten per cent of said amount.
(1967, P.A. 473, § 1, eff. July 1, 1968; 1969, P.A. 698, § 14, eff. June 24, 1969.)

§ 10-56. Corporate powers. Bonds issues

(a) A regional school district shall be a body politic and corporate with power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum. Such referendum shall be conducted in accordance with the procedure provided in section 10-47c except that any person entitled to vote under section 7-6 may vote and the question shall be determined by the majority of those persons voting in the regional school district as a whole. A regional board of education may expend any premium in connection with such issue, interest on the preceeds of such issue or unused portion of such issue to add to the land or buildings erected or purchased and for the purchasing and installing of equipment for the same. Such bonds shall be denominated "Bonds of regional school district number . . .of the State of Connecticut." Such bonds shall be serial bonds, with coupons attached, and registerable as to principal and interest or as to principal alone, shall be signed by the chairman and the treasurer of the regional board of education and shall bear such rate of interest, mature in such substantially equal instalments and be issued in such denominations and at such times and places as shall be determined by such board. The first instalment of any series of bonds shall mature not later than two years from the date of the issue of such series and the last instalment of such series shall mature not later than twenty years therefrom. Such bonds, when executed, issued and delivered, shall be general obligations of such district and the member towns, according to their terms. Any regional school district which has issued any bonds or other obligations pursuant to any general statute or special act may redeem them by issuing new bonds or other obligations.

(b) "Annual receipts from taxation" means the receipts from taxation of the member towns for the fiscal year next preceding the close of the last fiscal year of such regional school district. Notwithstanding the provisions of section 7-374, any regional school district may assume bonds or other indebtedness on any member town as part of the purchase price of any property for school purposes or issue bonds or notes, provided the aggregate indebtedness of such district shall not exceed: (1) In the case of a regional school district serving the same towns as are served by two or more town school districts, two and one-quarter times the annual receipts from taxation or (2) in the case of a regional school district empowered to provide for the member towns all programs under the general supervision and control of the state board of education, four and one-half times such annual receipts from taxation. Any regional school district may issue additional bonds or notes in an amount not to exceed three and one-half times such annual receipts from taxation less the aggregate indebtedness as defined in section 7-374 for the member towns of such district.

(c) When a district has been authorized to issue general obligation bonds as provided by this section, the board may authorize, for a period not to exceed four years, the issue of temporary notes in anticipation of the receipt of the proceeds from the sale of such bonds. Notes issued for a shorter period of time may be renewed by the issue of other notes, provided the period from the date of the original notes to the maturity of the last notes issued in renewal thereof shall not exceed four years. The term of such notes shall not be included in computing the time within which such bonds shall mature. The provisions of section 7-373 shall be deemed to apply to such notes. The board shall determine the date, maturity, interest rate, form, manner of sale and other terms of such notes which shall be general obligations of the regional school district and member towns. Such notes may bear interest or be sold at a discount. The interest or discount on such notes and any renewals thereof and the expense of preparing, issuing and marketing them may be included as a part of the cost of the project for the financing of which such bonds were authorized. Upon the sale of such bonds, the board shall apply immediately the proceeds thereof, to the extent required, to the payment of the principal and interest of all notes issued in anticipation thereof or deposit the proceeds in trust for such purpose with a bank or trust company, which may be the bank or trust company, if any, at which such notes are payable.

(d) Subject to the provisions of subsection (c) of this section, the board may deposit or invest the proceeds of bonds or of notes issued in anticipation thereof in the same manner and to the same extent as permitted school districts or municipalities in chapter 112.
(1967, P.A. 626, § 2, eff. June 21, 1967; 1967, P.A. 674, eff. Oct 1, 1967; 1969, P.A. 132, § 2, eff. May 14, 1969; 1969, P.A. 698, § 16, eff. June 24, 1969.)

§ 10-60. Borrowing in addition to bonds

In addition to the power to issue bonds as provided by section 10-56, such regional board of education may, when so authorized by a majority vote at a regional school district meeting called for such purpose, borrow sums of money in an amount which shall not exceed in the aggregate two hundred thousand dollars for a period not to exceed five years and pay interest thereon for acquiring lands, securing the services of architects and professional consultants, the operation and maintenance of regional schools, the installation of equipment therein and contingent or other necessary expenses connected therewith. Persons eligible to vote under the provision of section 7-6 may vote on such issue. Such loans shall be in the name of and shall be general obligations of such district and the member towns. The chairman and treasurer of the board shall sign the note evidencing any such loan.
(1969. P.A. 290, § 1, eff. May 28, 1969; 1969, P.A. 698, § 17, eff. June 24, 1969.)

§ 10-63a. Vote for withdrawal of town or dissolution of district

(a) Any town which is a member of a regional school district may, pursuant to a vote of its legislative body, apply to the regional board of education to institute procedure for withdrawal from the district or, in the case of a district composed of two towns, dissolution of the district as hereinafter provided.

(b) Any two or more towns which are members of a regional school district composed of three or more towns may, pursuant to a vote of the legislative bodies of the respective towns, apply to the regional board of education to institute procedure for the dissolution of the district as hereinafter provided.
(1969, P.A. 698, § 18, eff. June 24, 1969.)

§ 10-63b. Committee to determine conditions of withdrawal or dissolution

Within thirty days of receipt of an application pursuant to section 10-63a, the regional board of education shall call for the appointment of a committee to determine whether and under what conditions such withdrawal or dissolution shall take place. The committee shall consist of the following: One member of the board of education of each town within the district, to be selected by each such board, if any, or if none, an elector to be elected by the legislative body in such town; one member of the board of finance or comparable fiscal body of each town within the district to be selected by each such board or body; two members of the regional board of education, to be selected by such board, no more than one of whom may be a resident of a town making the application for the appointment of the committee; one member to be appointed by the state board of education, who shall not be a resident of any town within the district; the state treasurer or his designee, and one member to be appointed by the regional board of education, who shall be an expert in municipal bonding and financing and who shall not be a resident of any town within the district. The members shall receive no compensation for their services, but their expenses and those incurred by the regional board in connection with withdrawal or dissolution procedures shall be paid by the towns applying for withdrawal or dissolution. The appointee of the state board of education shall call the first meeting of the committee, and the committee shall organize and function in accordance with section 10-41.
(1969, P.A. 698, § 19, eff. June 24, 1969.)

§ 10-63c. Report of committee

Within one year after its appointment, the committee shall prepare a written report of its recommendation concerning the advisability of a withdrawal or dissolution. If the committee recommends a withdrawal or dissolution, the report shall include: (1) A determination of the value of the net assets of the regional district, (2) an apportionment of the net assets to each member town on the basis of the ratio which the total average daily membership of such town since its membership in the regional district bears to the total average daily membership reported to the state board of education by the regional board of education up to and including the last such report, (3) a plan for settlement of any obligations and the transfer of property from the regional school district to the member town school districts, (4) a timetable for the orderly withdrawal or dissolution of the regional district and establishment of town boards of education if none exist, (5) the question to be determined by the referenda and (6) such other matters as the committee deems necessary. The provisions of sections 10-43 and 10-45, except as provided below, shall apply to the procedures for submission of the plan to the state board of education, action by such board, presentation of such plan to the member towns, action by such towns and the dissolution of the committee. The establishment of any new town board of education shall be in accordance with chapter 146. Upon an affirmative vote in each member town, the regional board of education and member towns shall cooperatively implement the plan for dissolution or withdrawal of a member town.
(1969, P.A. 698, § 20, eff. June 24, 1969.)

§ 10-184. Duties of parents

All parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic and United States

history and in citizenship, including a study of the town, state and federal governments. Each parent or other person having control of a child over seven and under sixteen years of age shall cause such child to attend a public day school regularly during the hours and terms the public school in the district wherein such child resides is in session, or while the school is in session in which provision for the instruction of such child is made according to law, unless the parent or person having control of such child is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools. Children over fourteen years of age shall not be subject to the requirements of this section while lawfully employed at labor at home or elsewhere; but this provision shall not permit such children to be irregular in attendance at school while they are enrolled as pupils nor exempt any child who is enrolled as a member of a school from any rule concerning irregularity of attendance enacted by the board of education having control of the school.
(1949 Rev., § 1445; 1959, P.A. 198, § 1.)

§ 10-220. Duties of boards of education

Boards of education shall maintain in their several towns good public elementary and secondary schools, implement the educational interest of the state as defined in section 10-4a, and provide such other educational activities as in their judgment will best serve the interests of the town; provided any board of education may secure such opportunities in another town in accordance with provisions of the general statutes and shall give all the children of the town as nearly equal advantages as may be practicable; shall have charge of the schools of their respective towns; shall make a continuing study of the need for school facilities and of a long-term school building program and from time to time make recommendations based on such study to the town; shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes; shall determine the number, age and qualifications of the pupils to be admitted into each school; shall employ and dismiss the teachers of the schools of such towns subject to the provisions of sections 10-151 and 10-158a; shall designate the schools which shall be attended by the various children within their several towns; shall make such provisions as will enable each child of school age, residing in the town, who is of suitable mental and physical condition, to attend some public day school for the period required by law and provide for the transportation of children wherever transportation is reasonable and desirable, and for such purpose may make contracts covering periods of not more than five years; may arrange with the board of education of an adjacent town for the instruction therein of such children as can attend school in such adjacent town more conveniently; shall cause each child between the ages of seven and sixteen living in the town to attend school in accordance with the provisions of section 10-184, and shall perform all acts required of them by the town or necessary to carry into effect the powers and duties imposed upon them by law.
(1969, P.A. 690, § 4, eff. July 1, 1969.)

§ 10-221. Boards of education to prescribe rules

Boards of education shall prescribe rules for the management, studies, classification and discipline of the public schools and, subject to the control of the state board of education, the textbooks to be used; shall make rules for the arrangement, use and safe-keeping, within their respective jurisdictions, of the school libraries and approve the books selected therefor, and shall approve plans for schoolhouses and superintend any high or graded school in the manner specified in this title.
(1949 Rev., § 1479.)

§ 10-240. Control of schools

Each town shall maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter.
(1949 Rev., § 1497.)

§ 10-241. Powers of school districts

Each school district shall be a body corporate and shall have power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; to build, equip, purchase and rent schoolhouses and make major repairs thereto and to supply them with fuel, furniture and other appendages and accommodations; to establish and maintain schools of different grades; to establish and maintain a school library; to lay taxes and to borrow money for the purposes herein set forth; to make agreements and regulations for the establishing and conducting of schools not inconsistent with the regulations of the town having jurisdiction of the schools in such district; and to employ teachers, in accordance with the provisions of section 10-151, and pay their salaries. When such board appoints a superintendent, such superintendent may, with the approval of such board, employ the teachers.
(1949 Rev., §§ 1498, 1507; 1953, Supp. § 955d.)

§ 10-241a. Taking of site by eminent domain

Any town or regional school district may take, by eminent domain, land which has been fixed upon as a site, or addition to a site, of a public school house, and which is necessary for such purpose or for outbuildings or convenient accommodations for its schools, upon paying to the owner just compensation, provided such taking is with the approval of the legislative body of the town, and in the case of regional school districts, subject to the provisions of section 10-49, and in each case in accordance with the provisions of sections 8-129 to 8-133, inclusive. The board, committee or public officer empowered to acquire school sites in such school district shall perform all duties and have all rights prescribed for the redevelopment agency in said sections with respect to such taking. No school district, city or town shall take for school purposes the land of any ecclesiastical society, upon any part of which a church building has already been erected, without the consent of such ecclesiastical society, or any land devoted to or used for cemetery or burial purposes.
(1967, P.A. 720, § 1, eff. July 1, 1967.)

Law Review Commentaries
Condemnation. Abraham D. Slavitt. (March 1969) 43 Conn. Bar J. 89.

Library references
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§ 10-242. Meetings

The annual town meeting shall be the annual school district meeting and special meetings shall be called and held in the same manner as provided by law for special town meetings.
(1949 Rev., §§ 1499, 1539.)

§ 10-262. Amounts payable to towns

During each school year each town or school district maintaining schools according to law during the preceding school year shall be paid by the comptroller, upon the certification of the secretary of the state board of education, two hundred fifteen dollars per pupil in average daily membership.
(1967, P.A. 580, § 1, eff. July 1, 1967; 1969, P.A. 604, § 1, eff. July 1, 1969; 1971, June Sp.Sess., Sp.Act 1, § 13, eff. July 1, 1971; 1972, Sp.Act 53, § 11, eff. July 1, 1972.)